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IN THE

Supreme Court of the United States

October Term, 1943.

No. 362.

AUGUSTUS P. NORTON, Deputy Commissioner for the Third Compensation District,

Petitioner,

v.

WARNER COMPANY,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF OF AMICUS CURIÆ.

ABRAHAM E. FREEDMAN,
For National Marine Engineers Beneficial Ass'n.,
WILLIAM L. STANDARD,
For National Maritime Union,
E. BURKE FINNERTY,
For Inland Boatmen's Union, Railroad Division,
Amicus Curiæ.

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No. 362.

AUGUSTUS P. NORTON, DEPUTY COMMISSIONER FOR THE THIRD COMPENSATION DISTRICT,

Petitioner,

v.

WARNER COMPANY.

BRIEF OF AMICUS CURIÆ.

INTRODUCTION.

Rusin was a typical bargeman engaged in the routine duties incidental to that position. He did whatever was necessary aboard the barge in the conduct of its ordinary business. He would assist in shifting the barge, making lines fast, tightening or slackening the lines when necessary, managing navigational lights, keeping the vessel free of water and otherwise generally looking to the welfare and enterprise of the vessel.

The problem confronting the Court is whether Rusin was a seaman, in the sense that he was a member of the crew of a vessel and governed by the Maritime law or whether he was a longshoreman and governed by the Compensation Act.

The question here before the Court transcends the particular facts involved and in fact goes beyond the particular

group of workers of which Rusin was a member. The principle involved concerns not only bargemen but also every class of employee who work on boats in and around harbors such as men who work on tugboats, dredges, lighters, scows and other forms of water craft. There is no separate rule which would apply to barges or any other type of vessel. The rule rather makes a distinction between the men who are attached to the particular vessel as one of the "ship's company", as distinguished from those who come aboard either before the vessel has commenced or after she has concluded her enterprise.

The Courts have been far from consistent in attempting to differentiate between these two groups and an analysis of the opinions discloses that the Courts in some instances have overlooked the basic concepts of the Maritime law in testing the status of the particular employee. The Compensation Act excludes seamen who are members of the crew of a vessel in navigation. It is appropriate therefore to determine first what is meant by the term vessel, what type of craft are included and finally who comprise her crew.

WHAT CONSTITUTES A VESSEL IN NAVIGATION.

In speaking generally of a vessel in navigation, one is apt to think of an ocean going steamer engaged in some trade. The term, however, implies practically every other form of watercraft including all the various types of harbor and inland water vessels which are engaged in or in aid of navigation. Congress very early defined the term vessel as follows, (R. S. sec. 3, 1, U. S. C. A. 3):

> "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capa-

ble of being used, as a means of transportation on water."

The word "Transportation" is not expressly or impliedly limited to the carriage of passengers or merchandise for hire. A pleasure yacht or an ice boat is a vessel within the meaning of the Act of Congress equally with merchantmen or an ocean liner, although the ice boat may be designed solely to keep navigation open and the pleasure yacht may carry neither passenger nor merchandise for hire. *The International* (Pa. 1898) 89 Fed. 484, 32 C. C. A. 258.

Barges, canal boats, etc. used in transportation, though having no mast or sails or motive power of their own, are vessels within Admiralty Jurisdiction. *The Dick-Keys*, Fed. Cases No. 3,898; *Kate Tremaine*, Fed. Cases No. 7,622.

A barge or lighter employed in transporting stone used in the construction of a breakwater is a vessel. *Com. v. Breakwater Co.*, 214 Mass. 10.

Scows, though having no propelling power of their own, are vessels. *Ellis v. U. S.*, 27 S. Ct. 600, 206 U. S. 246, 51 L. Ed. 1047; *The General Cass*, Fed. Cases No. 5307.

The Act includes a scow 110 feet long and 34 feet wide, without motive power of its own, employed in carrying mud from the harbor to the dumping ground. *In Re: Eastern Dredging Company*, 138 Fed. 942.

A raft made of cross ties used as a convenient mode of bringing them to market manned by a pilot, crew and cook and propelled by the tides, by poles and by oars, is a vessel within this section. *Seabrook v. Raft of Railroad Crossties*, 40 Fed. 596.

A pump boat, which is a floating structure equipped with engine, boiler, pumps and pipes and used for pumping out coal barges and is capable of being moved on the water

by ropes or by being towed, is a vessel within this section and subject to Admiralty Jurisdiction. *Charles Barnes Co. v. One Dredge Boat,* 169 Fed. 895.

Float dredges are vessels. *Ellis v. U. S.* (supra). A steam dredge without motive power of its own but capable of being towed from place to place is a vessel within the definition given by this section. *Saylor v. Taylor,* 77 Fed. 476; *McRae v. Bowers Dredging Company,* 86 Fed. 344.

A steam dredge and the scows used in connection with it are each a vessel within this section. *The International* (supra); *"The Alabama",* 22 Fed. 449; *The Starbuck,* 61 Fed. 502.

A flat boat with a pile driver and its engine erected thereon, mainly used in the construction of bulkheads and in transporting materials used in the work capable of being towed for that purpose, is a vessel within this section. *Southern Log Cart and Supply Co. v. Lawrence,* 86 Fed. 907.

Even a houseboat, which is not permanently attached to the shore though without motive power, is a vessel and subject to maritime liens. *"The Ark",* 17 Fed. (2d) 446.

It could not be disputed, nor is it denied here that the barge in question was a vessel in navigation. It remains now to determine the indicia of those who constitute "members of the crews" of these vessels.

WHO ARE MEMBERS OF THE CREW OF A VESSEL.

Prior to the Jones Act (46 U. S. C. A. 688), (1920), the term "seaman" was generally used in referring to the ship's company and there was no reason to distinguish that term from the term "member of the crew". On the contrary the terms were used interchangeably and there was never any doubt that both terms meant the ship's com-

pany. Congress defined the term "seaman" in the Merchant Shipping Act as follows: (46 U. S. C. A. 713):

> "In the construction of this chapter, every person having command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'; and the term 'vessel' shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river. . . ."

In early times the ship's crew performed not only the work incident to the operation of the vessel, but also took care of loading and discharging cargo while the vessel was at rest. In the course of time, however, these latter duties became so specialized that commercial exigencies caused the development of a separate labor group which was especially proficient in the handling of cargo. Under the new regime, these men, known as stevedores or longshoremen, were employed by a shore employer, an independent contractor, who would be engaged by the vessel to load or discharge the ship. There was no privity of contract between the ship and these men as there was between the ship's crew and the vessel. They had no lien against the vessel for wages, *Paul v. Bark Ilex*, 2 Woods, 229, and they were characterized as landsmen when compared to members of the crew: *"The Ole Oleson,"* 20 Fed. 384. With respect to torts, the stevedores had a right of action governed by the Maritime law, not because they were members of the crew, but because the tort occurred on navigable waters in connection with a maritime service. *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52, 58 L. Ed. 1208, 34 Sup. Ct. Rep. 733. In

the latter case, the Court distinguished this group of workers from the ship's company as follows, Page 62:

> "Formerly the work was done by the ship's crew; but owing to the exigencies of increasing commerce and the demand for rapidity and special skill, it has become a specialized service devolving upon a class 'as clearly identified with maritime affairs as are the mariners'."

Thus, although both groups of employees while on navigable waters are governed by the Maritime law, the line between them is sharply drawn. The seaman looks to the vessel and the shipowner, while the longshoreman looks to his stevedoring employer. Until the passage of the Jones Act (46 U. S. C. A. 688) in 1920, there was no difficulty in differentiating between a seaman and a longshoreman. There was no occasion for the latter to be termed a seaman and he was referred to as a longshoreman or stevedore and not as a seaman. The latter was always identified as one of the ship's company or a member of the crew.

With the enactment of the Jones Act, the term "seaman" was construed to include not only the ship's company but also those maritime workers known as longshoremen and stevedores. This Court so construed the term "seaman", in *International Stevedoring Co. v. Haverty,* 272 U. S. 50, 71 L. Ed. 157, 47 S. Ct. 19, and applied the benefits of the Jones Act to the longshoremen. The Court makes it abundantly clear, however, that the stevedores are classified as seamen only for the purpose of the Jones Act so as to nullify the effect of the fellow servants rule as to those men. The Court expressly leaves intact the meaning of the term insofar as it had always applied to the ship's company. Said the Court, p. 52:

"It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen'. But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew, Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 62, 58 L. ed. 1208, 1212, 51 L. R. A. (N. S.) 1157, 34 Sup. Ct. Rep. 733. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship. The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of the business. If they should be protected in the one case, they should be in the other. In view of the broad field in which Congress has disapproved and changed the rule introduced into the common law within less then a century, we are of opinion that a wider scope should be given to the words of the act, and that in this statute 'seamen' is to be taken to include stevedores employed in maritime work on navigable water, as the plaintiff was, whatever it might mean in laws of a different kind."

Thus the longshoremen were termed seamen but only in a limited sense for the purpose of the Jones Act. The Court was careful to indicate that in regard to other laws they would not be so regarded, as for example in connection with the right to maintenance and cure and wages. It may, therefore, be fairly stated that the term "seaman" may be used synonymously with "member of the crew", if we should eliminate longshoremen and stevedores from consideration. The Longshoreman's Compensation Act, (33 U. S. C. A. 901 et seq.) did so eliminate the longshoremen from the benefits of the Jones Act. The Longshoreman's Act adopted in 1927, expressly excludes from its coverage

the "master or member of the crew of any vessel". (sec. 903.) It is indisputably clear that Congress did not intend to include within the provisions of the Act those men who had always been classified as seamen prior to the Jones Act. Those men neither wanted nor required the benefits of a compensation act since the remedies which they already had were substantially superior to the remedies afforded by the Compensation Act. This Court pointed out this very distinction in *Warner v. Goltra,* (1934), 55 S. Ct. 46, 293, U. S. 155, 79 L. Ed. 254, as follows (pp. 159-160):

> "The scheme of legislation becomes symmetrical and consistent when the Merchant Marine Act of 1920 is read in the light of another act in pari materia, the Longshoremen's & Harbor Workers' Compensation Act (U. S. C. title 33, § 901 et seq.) adopted in March 4, 1927. This act expressly excludes from its 'coverage' a 'master or member of a crew of any vessel.' § 903. The exclusion was at the request of seamen who notified the committee in charge that they preferred the remedy for damages under the act of 1920 to the benefits that would be theirs under a system of workmen's compensation. See Hearings before a Subcommittee of the Senate Committee on the Judiciary, 69th Cong. 1st Sess. on S. 3170, at p. 17; Cong. Rec. 69th Cong. 2nd Sess. vol. 68, part 5, p. 5908; Nogueira v. New York, N. H. & H. R. Co., 281 U. S. 128, 134, 136, 74 L. ed. 754, 758, 759, 50 S. Ct. 303. The bill was accordingly amended in its progress through the House by declaring the exception. There can be little doubt that Congress did this in the belief that under the statutes then in force master and crew alike were already adequately protected in case of injury or death. The belief had a sound foundation in the act of 1920. Cf. Nogueira v. New York, N. H. & H. R. Co., supra, at p. 134."

To allow the compensation act to extend into the field governing the regular seamen would be a step backward

and not forward. A comparison of the remedies afforded by the Compensation Act with the remedies provided under the maritime law as hereinafter set forth proves beyond any doubt the superiority of the latter. The question now arises: who are seamen? What group or groups of men does the term embrace and what are the tests which distinguish a seaman as one of the ship's company.

Some of the comparatively recent decisions, in determining whether a man is a "member of the crew", have employed as the criterion the man's prior record to see if he was an experienced seaman, while others have relied on the nature of the man's duties. (See opinion of District Court in instant case.) It was reasoned that if the man had not been a qualified mariner he could not be a member of the crew; or if his duties were similar to those of a laborer or a harborworker, then he is likewise not a member of the crew. None of these theories will bear analysis.

The nature of a man's duties on board the vessel, his prior experience and other incidents of his employment such as his sleeping and eating on board the vessel, are of course evidence of his status on the vessel, but that status cannot be determined without taking into consideration certain other critical factors which go to the very root of the question. To determine whether a man is a member of the crew of a vessel, we must first consider the nature of the vessel itself and then, what is most important, we must consider *the nature of the enterprise in which the vessel is engaged.* All those who are engaged in furtherance of that enterprise are "members of the crew", irrespective of any other considerations. It is not infrequent that the duties of longshoremen are identical with the duties of men who are concededly "members of the crew". The

distinction, therefore, cannot be determined by the nature of the duties alone, but by a consideration of (1) the relationship of the seaman to the vessel, (2) the nature of the enterprise in which the vessel is engaged, and (3) the relationship of the duties to be performed in conjunction with the vessel's main enterprise. In other words, if the vessel is engaged in the carriage of passengers or cargo, all those whose duties aboard the vessel were in aid of that purpose would be members of the crew even though they were not all engaged in navigating the vessel. Thus, for example, horsemen, signed on a vessel to care for horses during the voyage are "members of the crew": *U. S. v. Atlantic Transport Co.*, 188 Fed. 42, cert. den. 223 U. S. 724. Musicians employed aboard a steamer are "members of the crew", even though they do not assist in any way in the actual navigation of the vessel: *"The Sealark"*, 14 F. (2d) 201. A clerk on a steamboat is a mariner: *"The Sultana"*, Fed. Cas. No. 13,602. A bartender on a vessel is a "member of the crew": *"The J. S. Warden"*, 175 Fed. 314. Woman telephone operator is a "member of the crew": *"The Malolo"*, 1931 A. M. C. 426. Men employed by a motion picture producer to navigate a vessel as actors in the production of a play are nevertheless seamen and governed by the General Maritime law to the exclusion of the local (Cal.) Compensation Act: *"Old Ironsides"*, 1929 A. M. C. 300. The ship's carpenter, who does not assist in navigation is a "member of the crew": *Sheridan v. Furbur et al.*, Fed. Cas. No. 12,761. A person in charge of a confectionery stand on a steamer is a member of the crew: *Conner v. The Ship Flora*, 6 Exq. Ct. Reports (Can.) 151. In the *Baron Napier*, 249 Fed. 126, a muleteer, performing the services of a watchman was given the status of a seaman.

Persons employed on a fishing tug solely for purpose of catching and preserving fish are mariners notwithstanding they take no part in the navigation of the vessel: *"The Minna"*, 11 Fed. 759. The criteria relating to members of the crew were very aptly stated in the early case of *"The Ocean Spray"*, Fed. Cas. No. 10,412, as follows:

> "No case has been cited upon the point of whether a sealer is to be considered a mariner, and therefore entitled to a lien upon the vessel for his wages. It is admitted that such persons as surgeons, carpenters, cooks, stewards and cabin-boys are considered mariners. But it is claimed that this is so for the reason that these persons all aid in the navigation and preservation of the vessel. *But I think the better reason is found in the fact that they are co-laborers in the leading purpose of the voyage.* Upon this ground, even if it be admitted that the libellants shipped and served as sealers only, they ought to be deemed mariners. They were certainly co-laborers, and the principal laborers, in the only purpose of this voyage—the taking of fur-seal. The seamen, who have an undoubted lien upon the vessel for their wages, only contributed to this purpose by navigating it. Without these sealers the voyage must have been profitless, because the purpose of it could not have been accomplished."

The foregoing, and many other illustrations compel the conclusion that the employee's duties alone are insufficient to test his status but that they must be considered in the light of the vessel's enterprise. In the instant case, the vessel, a barge, was engaged in the transportation of cargo, and every person who was employed to aid in the conduct of that enterprise was necessarily a member of her crew.

Obviously, Rusin was clearly within that category. The principle which characterizes "members of the crew" extends much further than the crews of barges which are engaged in transportation. There are many other forms of enterprise in which a vessel may engage beside the transportation of passengers or cargo. Among these are dredging operations which are in aid of navigation. It will immediately be seen that the duties incident to such an operation are entirely different from those ordinarily incident to a passenger or cargo vessel. Yet the dredge, as will clearly be shown, is engaged in navigation equally with the other vessels and the men who operate her are also "members of the crew". The duties of the latter, although similar in many respects to those of laborers are nevertheless in aid of the vessel's enterprise. The test in distinguishing members of the crew is whether the workmen contribute in any degree to the accomplishment of the main objective in which the vessel is engaged. The rule was set forth in *Saylor v. Taylor*, 77 Fed. 476 at p. 478, as follows:

> "It is difficult to fix with precision any line of delimitation between services essentially maritime and those claimed to be such because performed upon a vessel at sea, or within the ebb and flow of the tide; nor will it be profitable to follow the struggle for jurisdiction between the courts of common law and the courts of admiralty. It is now well settled that all persons employed on a vessel to assist in the main purpose in which she is engaged are entitled to a lien for wages. So it has been held that clerks, carpenters, chambermaids, cooks, stewards, and waiters are so entitled, Dest. Shipp. & Adm. S. 173, and cases there cited. The statute above referred to, which declares that persons employed 'in any capacity' upon vessels shall be deemed 'seamen', seems conclusive upon this point. If

it be considered necessary to give a reason for a rule supported by a great weight of authority, it would be found in this, that a vessel and her crew are considered a unit. Each person aboard of her contributes according to his capacity to the success of the enterprise in which she is engaged. If she comes within the maritime jurisdiction, the persons employed aboard of her come also, with all the rights and disabilities which flow therefrom. Among those rights, from the days of Oleron, are that the ship stands responsible for the wages of the seamen. It is this assurance that enables her to command those services that are essential to the prosecution of her enterprises.

. . . .

"At first blush it would seem a stretch of the rule to hold a dredge and her accompanying scows to belong to the same class with ocean steamships. The idea of commerce does not come into the mind primarily in connection with such craft; but, when it is borne in mind that they are constructed to move upon the water, and nowhere else, and that, while thus moving upon the water, they are subject to all the rules that govern other water craft as to lights, collisions, etc., it will be seen that they have that mobility and capacity to navigate which are recognized as the prime elements in determining the subjects of maritime liens. And so it seems a stretch of the imagination to class the deck hands of a mud dredge in the quiet waters of a Potomac creek with the bold and skillful mariners who breast the angry waves of the Atlantic; but such and so far-reaching are the principles which underlie the jurisdiction of the courts of admiralty that they adapt themselves to all the new kinds of property and new sets of operatives and new conditions which are brought into existence in the progress of the world. Hence it is that in all times and in all countries those who are employed

upon a vessel in any capacity, however humble, and whose labor contributes in any degree, however slight to the accomplish ent of the main object in which the vessel is engaged, are clothed by the law with the legal rights of mariners, no matter what may be their sex, character, station, or profession. Ben. Adm. S. 241."

In *M'Rae v. Bowers Dredging Co.*, 86 Fed. 344, the Court was required to determine which of the vessel's personnel were members of the crew and as such entitled to a lien against the vessel for wages. At page 348, the Court said:

"A dredging vessel, designed to facilitate navigation, by going from place to place, to be used in deepening harbors and channels, and removing obstructions from navigable rivers, and to bear afloat heavy machinery and appliances for use in that class of work, may commit, or be injured by, a marine tort, and she may become subject to a maritime lien for salvage. She has mobility, and her element is the water. She can be used afloat, and not otherwise. She has carrying capacity, and her employment has direct reference to commerce and navigation. I perceive no reason for exempting such a vessel from the liabilities arising from non-payment of the wages of her crew, or from such unfulfilled contracts as would subject other vessels to liens enforceable by a court of admiralty.

"I find no difficulty in pronouncing in favor of the engineers, firemen, deck hands, and captains who worked on board of the dredges. They have maritime liens for the balances due to them for wages. The captains were not clothed with the authority of masters, but were simply foremen in charge of the working crews. Therefore the rule that the master of a vessel has no lien for wages does not apply to them.

> Those who worked as general mechanics in keeping the machinery in repair, and the pipe men, who attended to laying, connecting, and moving the lines of pipe, and those who performed necessary labor upon and about the filled area, are also entitled to liens. Their services were required in prosecution of the enterprise in which the vessels were employed. The right to claim a lien for wages under the general maritime law is not restricted to favor only mariners who serve the ship with peculiar nautical skill, but extends to all whose services are in furtherance of the main object of the enterprise in which the ship is engaged. The Minna, 11 Fed. 759; The Ocean Spray, Fed. Cas. No. 10,412."

In the *Z. R. 3,* 18 Fed. (2d) 122, the vessel was engaged in catching, packing and salting fish. Libellant was one of those engaged to pack and salt the fish in the course of the voyage. Suit was brought against the vessel for wages. Said the Court, p. 123:

> "As presently employed, a seaman is not a mariner in the full sense of the word—a person 'who can hand, reef, and steer.' Changing conditions, and necessities for changes, extended the term to include all persons employed in a vessel to assist in the main purpose of the voyage. Clearly, the main purpose of the voyage was to pack and salt fish. See The Minna (D. C.) 11 F. 759; The Sea Lark (D. C.) 14 F. (2d) 201."

In *The Hurricane,* 9 F. (2d) 396, a dredge foreman who was not licensed was held to be a member of the crew and entitled to a lien for wages.

The duties of a vessel's personnel may in many instances be identical with the duties of laborers or longshoremen. Obviously, therefore, the duties alone are insufficient to determine the employee's status. In this

connection the Court made a very pertinent observation in *Maryland Casualty Co. v. Lawson*, 94 F. (2d) 190, as follows (p. 192):

> "There is implied a definite and permanent connection with the vessel, an obligation to forward her enterprise and to protect her in emergency, and a right to look to her and her earnings for wages. If she has a master, there is subjection to his commands. The nature of the work done is not determinative. Engineers and cooks as well as sailors are included. Longshoremen who load and unload a vessel under temporary local employment do not become members of the crew, nor do mechanics who similarly come aboard her to repair or clean or paint her; *nor do those permanently employed upon her cease to be members of the crew because they are put at the same sort of work.*" (Italics ours.)

In *Kibadeaux v. Standard Dredging Co.*, 81 F. (2d) 670, a deckhand on a dredge sued to recover damages under the Jones Act for personal injury on the dredge. The suit was dismissed by the Court below for want of jurisdiction. In reversing the lower court, the Court of Appeals held the deckhand a member of the crew, governed by the maritime law to the exclusion of the compensation laws. In a well considered opinion the Court, after summarizing the authorities on the point, said, p. 674:

> "'Whatever the nature of their work, it is incident to their employment on the dredges and scows, as in the case of an engineer or coal shoveler on board ship.' As against a regulatory city ordinance, a dredge was held to be a vessel and her engineers seamen in Los Angeles v. United Dredging Co. (C. C. A.) 14 F. (2d) 364. This dredge was a vessel and Kibadeaux

a seaman and a member of her crew. An injury to him by the unseaworthiness of the vessel was cognizable in admiralty. Neither the Longshoremen's Act nor the state statutes apply."

SOUTH CHICAGO COAL AND DOCK CO. V. BASSETT.

There has been some confusion concerning the interpretation of the opinion of this Court in the case of *South Chicago C. & D. Co. v. Bassett*, 309 U. S. 251, 60 S. Ct. 544, 84 L. Ed. 732. An analysis of that decision clearly shows it to be consistent with the argument which we make here. In that case, the vessel, a lighter, was engaged in transporting coal from the dock to other ships in the harbor. The employee was engaged as a deckhand but his main and primary duty was to facilitate the flow of coal to the vessel being fueled *after the vessel was at rest.* He performed no navigation duties; he slept at home and boarded off the ship. *He did no work while the boat was en route from the dock to the vessel being fueled.* The Court considered these facts as significant and the decision must be read in the light of these facts. The employee was drowned in the course of his employment and the deputy commissioner found that he had not been a "member of the crew" and rendered an award of compensation to the widow. This finding was sustained by the Supreme Court. In discussing who were members of the crew this Court said, p. 260:

> "This Act, as we have seen, was to provide compensation for a class of employees at work on a vessel in navigable waters who, although they might be classed as seamen (International Stevedoring Co. v. Haverty, 272 U. S. 50, 71 L. ed. 157, 47 S. Ct. 19, supra), were still regarded as distinct from members of a

'crew'. They were persons serving on vessels, to be sure, but their service was that of laborers, of the sort performed by longshoremen and harbor workers and thus distinguished from those employees on the vessel who are naturally and primarily on board to aid in her navigation."

The last sentence has been misinterpreted in some instances and some courts have reasoned that unless the employee's duties are related to the actual navigation of the vessel then he is not a seaman. We suggest that the Court in the *Bassett* case never intended any such interpretation. The more reasonable construction, and one most consistent with the basic principles involved, is that all those who are engaged in the vessel's main enterprise and are primarily on board to aid her in that enterprise while she is engaged in navigation are members of her crew.

In the *Bassett* case the vessel's main enterprise was transportation of coal from the dock to a vessel in the harbor. While she was en route from the dock to the ship, she was engaged in the dominant purpose of her existence—*transportation*. All those who aided her or performed any services incidental to that purpose were members of her crew. When she reached the vessel to be fueled she was then at rest, and discharging her coal was only incidental to her main enterprise. It is this type of service which is ordinarily performed by longshoremen and not members of the crew.

In considering whether the decedent in the *Bassett* case was a member of the crew the Court laid particular stress upon the fact that the decedent had no duties to perform while the vessel was en route on her voyage. This is unquestionably the most important and vital element in determining whether a man is or is not a member of the

crew. In fact it may be stated that the decedent could very well have remained on the pier while the vessel was embarked on her voyage and his absence would never be felt on the vessel while en route. We venture to suggest that the court would have reached the opposite conclusion if the decedent was required to perform any services or had any duties while the vessel was en route. Without such evidence, it could not be said as a matter of law that the decedent was a member of the crew. In the case at bar, Rusin was specifically required to perform all the duties necessary to the welfare and operation of the vessel during her actual journey.

Petitioner argues at some length that not only are the commissioner's findings of fact final but all the inferences and conclusions should likewise be accorded finality if there is any evidence to support them. We think this argument goes far beyond the rule established by the cases cited in support by Petitioner.

There is, of course, a vast distinction between the weight which is given to a fact finding of the commissioner and a legal conclusion drawn from those facts. The courts have sustained fact findings where there is substantial evidence in support and where the finding is not against the great weight of the evidence. Where conclusions of law are concerned, however, an entirely different rule prevails. The court may consider the commissioner's conclusions as advisory but in no way binding. The procedure is analogous to that relating to special masters and commissioners in admiralty. *Crowell v. Benson,* 285 U. S. 22. None of the cases cited go beyond this rule. A distinction must also be drawn between an inference of fact and a conclusion of law. For example, if an automobile fails to stop

when the brake is applied, it justifies the factual inference that the brakes are out of order or defective. It may also be concluded from those facts as a matter of law that the automobile owner was negligent in failing to have the brakes in proper working order. The inference of fact that the brakes were defective could well be accorded finality but the latter conclusion is always subject to judicial review and if contrary to legal principles would have to be reversed. The cases cited by petitioner involve principally factual inferences such as we have suggested above.

It has been suggested that there is a "twilight zone" between longshoremen and members of the crew as exhibited in the case of *Davis v. Department of Labor*, 317 U. S. 249. We submit that there is no basis for such an interpretation. Moreover, we assume further that this court will bend every effort to define the exact line of demarcation between these two groups of employees in order to avoid such a "twilight zone". In the *Davis* case this court used the term "twilight zone" only because it felt compelled to do so because of the much criticized and so-called "ill starred" *Jensen* case, 244 U. S. 205. This entire court in the *Davis* case expressly indicated its disapproval of the *Jensen* doctrine but felt that a reversal of policy should be a matter for the legislative rather than the judiciary. To permit a "twilight zone" to enter the picture here is to expand the uncertainty and confusion. We submit that under the rule which has been followed from the earliest times, longshoremen can be clearly distinguished from members of the crew of any vessel. The employee's duties with relation to the vessel's main enterprise clearly defines the limits of the respective employments. Another test could be to determine whether the

particular employee would have been entitled to maintenance and cure before the Compensation Act was passed. (1927). If the answer be in the affirmative, then he could only be classified as a member of the crew because longshoremen never had that right.

It might also be stated that the Compensation Act is exclusive wherever applicable (sec. 905) and the maritime law is exclusive wherever applicable. *Panama R. R. v. Johnson*, 264 U. S. 375. These would likewise negative any theory of overlapping between these employees.

From the economic standpoint, if a "twilight zone" were permitted, the employee may have an election to select the remedy provided either by the commissioner or that of the admiralty, but any advantage so derived would be more than dissipated because his status would never be certain and would depend on the frame of mind of the particular commissioner or Judge. It is conceivable that a man in the so-called "twilight zone" may be denied recovery by a commissioner and have an admiralty court refuse jurisdiction on the ground that he was not a member of the crew. Petitioner's theory is not only destructive of the uniformity intended by the maritime law, *Panama R. R. v. Johnson*, supra, but it is opposed in principle by majority and dissenting opinions in the *Davis* case.

Petitioner argues that whether a man is a member of the crew is a question of fact and cites the *Bassett* case in support. In analysing the *Bassett* case, petitioner contends that the court rejected the employer's contention that the interpretation of the term "member of the crew" is a question of law. As we read the opinion, the court very definitely considered it was a question of law *but could not conclude from the facts that the employee was a member*

of the crew. This by no means changes the question of law to one of fact. A reference to the pertinent excerpt of the opinion bears out this explanation (p. 258):

> "Petitioners urge that the question whether the decedent was a member of a 'crew' was a question of law. That is, that upon the undisputed facts the decedent must be held as a matter of law to have been a member of a 'crew' as distinguished from a longshoreman or laborer at work upon a vessel. We are unable so to conclude."

The court then goes on to say that the term "crew" does not have an absolutely unvarying legal significance but it indicates very definitely that it is nevertheless a *legal* question and then proceeds to determine the standards which characterize a "crew". The court finally concluded that the facts in the record did not compel the legal conclusion that the employee was a member of the crew. Here again it is significant to note that the Court emphasized the fact that the employee had no duties while the vessel was en route. In the instant case, as in the case of all bargemen, the situation is reversed and the employees are required to perform duties not only when the vessel is en route but to aid and further the vessel's enterprise.

Petitioner refers to the case of *Canty v. McLain Line*, 312 U. S. 667, where a bargeman's suit was dismissed below and was reversed and remanded by this court without hearing on the authority of the *Bassett* case. Petitioner argues from this that it was a question of fact and was sent back for a determination of the facts. Here again an examination into the *Canty* case reveals that all the facts were set forth in an amended libel disclosing in detail all of the bargeman's duties (Par. fourth, sixth and sev-

enth of amended libel.) Notwithstanding all these detailed duties (similar to those at bar) the court below found that they did not warrant the conclusion that the employee was a member of the crew. It may be stated that such findings would have at least the same finality as those of a commissioner if the rule applied to such conclusions. In this view the reversal by the Supreme Court could only mean that it was a question of law and that the findings were contrary to law. That under the facts in the amended libel it must be concluded as a matter of law that Canty was a member of the crew.

Petitioner attempts throughout to differentiate between longshoreman and member of crew by a consideration only of the nature of their respective duties. In this view it is only natural therefore that he should fall into error and argue that there is a "twilight zone" because the duties of both groups are in many respects identical. Were this the correct rule then the term "member of the crew" could only embrace those who "hand, reef and steer".

The true rule does not depend upon the nature of the duties alone, but, as the courts have said, the duties in relation to the vessel's main enterprise are the controlling factor. In the *Bassett* case, the employee's duties had no relation to the vessel's enterprise. In the instant case, the employee had everything to do while the vessel was actually en route on her voyage in the course of her main enterprise. These facts are not susceptible of any conclusion other than that Rusin was attached to the vessel itself as a member of its crew.

RUSIN WAS A MEMBER OF THE CREW.

The vessel was a wooden barge without motive power about one hundred feet long. It was engaged in transporting cargo on the Delaware River within a radius of thirty miles from Philadelphia calling at various ports including Wilmington, Delaware, Chester, Penna., Camden, Cooper's Creek, Riverside and Morrisville, N. J. Rusin received a basic wage of $80.00 per month and ate and slept on board the vessel. He was the only man on the barge although he would have another man helping him at times with the lines. (R. 136 to 138.) His duties were as follows: He attended to the barge's needs, keeping it safe and pumped out; keeping the barge properly tied up and adjusting the lines with the rise and fall of the tide; requisitioning and keeping the barge equipped with lines; report any leaks or anything else necessary to keep vessel in safe condition; to take soundings and keep the barge free of water; he took orders from the Captain of the tug while the vessel was under tow; he responded to orders from the tugboat to slacken or adjust the lines; he was charged with operating the navigational lights; in the absence of the tug he was sometimes required to move the barge himself with the lines and other barge equipment; he had no duties in connection with the handling of cargo. (R. 153-157.)

There is no question about this barge being a vessel in navigation. As such, she required someone to look after her welfare and management while she was carrying her cargo from place to place. Rusin did exactly that. He was on board primarily to aid the vessel in its enterprise of transportation and all his duties were directed to that end. Without his presence on the vessel while en route, the vessel might well founder if soundings were not taken and

the vessel kept pumped out or it might collide with other shipping for want of someone to properly manage her navigational lights. Or she might break away from the towboat for want of someone to look after her lines and keep them adjusted while under tow. These, among other considerations, compel the single conclusion that Rusin was a member of the crew.

This case is typical of the average bargeman. These men, and all those others hereinbefore referred to, have always been afforded the same rights and privileges accorded to seamen sailing the high seas. They are all performing services directly in aid of navigation, and Congress never intended to alter the rights of these men by the Compensation Act. The Compensation Act was intended to benefit only the stevedores and longshoremen who did not previously have the remedies which these men possessed. In fact, it may be stated that another way of determining who were members of the crew as distinct from longshoremen would be to go back before the Compensation Act to ascertain which men enjoyed such additional remedies as maintenance and cure. Longshoremen were never accorded that privilege. Bargemen were always possessed of that right. Admittedly, Congress never intended to disturb any of those vested rights or to deprive anyone of their benefits.

THE APPLICATION OF THE COMPENSATION ACT WOULD NOT RESULT IN ANY SOCIAL OR ECONOMIC BENEFITS BUT WOULD CURTAIL EXISTING RIGHTS.

It has been suggested that the decision in the instant case adversely affects a large class of maritime workers and will deprive them of the social and economic benefits of the Compensation Act. It is further suggested that

these men do not have the benefit of the Public Health Service nor the right to claim maintenance and cure and "can hardly afford to sacrifice the more certain if more modest benefits of the Act for a possibly greater recovery under the Jones Act".

We must respectfully disagree with the Learned Solicitor General in all of these respects. To begin with, the law does make specific provision to afford these men treatment at the Public Health Services. (24 U. S. C. A. 1.) In 29 Op. Atty. Gen. 583, it was held that employees on scows and floating dredges were clearly within this statute. In any event, regardless of what provision may be made for the treatment of these men, the hospital service of the United States is not intended to supersede the maritime law, which imposes an obligation on the vessel and her owner to care for sick or injured seamen, but is only auxiliary thereto. In *Waterman S. S. Corp. v. Jones*, 87 L. Ed. 799, this Court said (L. Ed. p. 802):

> "The provisions for public assistance were not intended to relieve the shipowner of his duty. On the contrary their purpose was to make sure the seaman would have care, if the employer should fail to give it and in the rarer cases to which his obligation does not extend."

The suggestion that these men would be given certain benefits under the Compensation Act as compared with the uncertain benefits under the Jones Act completely overlooks the remedies afforded under the maritime law. To begin with, these men are first entitled to maintenance and cure and if the maritime law stopped there, they would still have greater rights and equally certain. The Compensation Act provides a remedy only for injuries due to acci-

dents. The maritime law allows maintenance and cure for illness as well as accident. Furthermore, the illness need not be caused by the employment. *Calmar S. S. Corp. v. Taylor,* 303 U. S. 525; *Waterman S. S. Co. v. Jones,* Supra. Compensation is allowable only for injuries on board the vessel. Maintenance and cure is allowable for injury or illness sustained on shipboard or on shore while in the ship's service, *Waterman S. S. Corp. v. Jones,* Supra.

Since the right to maintenance and cure is certain and in itself is broader than compensation, it is immediately evident that the seaman would be the loser by being included in the Compensation Act, even if maintenance and cure was his only remedy. However, his remedies do not stop with maintenance and cure. If his illness or injury is due to the unseaworthiness of the vessel or her equipment or to the negligence of the employer or any fellow servant he is entitled to indemnity in addition to his maintenance and cure. *Socony Vacuum Oil Co. v. Smith,* 305 U. S. 424. This Court recognized the advantages of the Jones Act alone over the Compensation Act in *Warner v. Goltra,* supra, when it held that the seamen's belief in refusing the advantages of the Compensation Act had a sound foundation in the Jones Act.

Bargemen such as Rusin, men who work on dredges, scows and other harbor craft have always been recognized as members of the crew of their particular vessels. They have never been segregated from the class of seamen who sail the high seas. In fact, these same barges and other craft frequently recruit their men from the same union halls which supply the largest merchantmen. The Congress in exempting "members of the crew" from the Compensation Act recognized the pleas of the entire industry and intended

to cover only those who did not have the rights which these men enjoy. Longshoremen and stevedores have never had the right to recover for maintenance and cure nor many of the other privileges open to seamen. These same rights have never been denied to men who operate barges, dredges and other watercraft.

To attempt to include this latter group under the compensation laws would accomplish indirectly in part what the shipowners have been trying to accomplish through legislation for many years. It would be a tremendous step backward for the seamen, and certainly of existing rights. This would, of course, be entirely contrary to the expressed interpretations of the Courts.

It is, therefore, respectfully submitted that the decision of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
For National Marine Engineers Beneficial Ass'n.;

WILLIAM L. STANDARD,
For National Maritime Union,

E. BURKE FINNERTY,
For Inland Boatmen's Union, Railroad Division,
Amicus Curiæ.

SUPREME COURT OF THE UNITED STATES.

No. 362.—October Term, 1943.

Augustus P. Norton, Deputy Commissioner for the Third Compensation District, Petitioner, *vs.* Warner Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[March 27, 1944.]

Mr. Justice Douglas delivered the opinion of the Court.

The question in this case is whether Nicholas Rusin, a bargeman employed by respondent, is entitled to compensation under the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U. S. C. § 901) for injuries received when a capstan bar, which he was using to shift the barge at a pier, pulled out and struck him upon the chest and caused him to fall. The answer turns on whether Rusin was a "master or member of a crew of any vessel". If he was, he is not entitled to the compensation because such persons are expressly excluded from the coverage of the Act by § 2(3) and § 3(a)(1).

The Deputy Commissioner found that Rusin was a harbor worker, not a "master or member of a crew", and granted him a compensation award.[1] The District Court upheld the Deputy Commissioner in a suit which respondent-employer brought to set aside the award. 45 F. Supp. 835. The Circuit Court of Appeals reversed. 137 F. 2d 57. The case is here on a petition for a writ of certiorari which we granted because of the asserted failure of the court below to give proper effect to our decision in *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251.

The facts, as found by the Deputy Commissioner and amplified by additional evidence adduced before the District Court, are not in dispute. Rusin was employed as a boatman on a barge which at the time of the injury was afloat on the navigable waters of the United States. The barge had no motive power of its own and was moved either by towing or for shorter distances, by the wind-

[1] Cf. the finding of the Deputy Commissioner in Diomede v. Lowe, 14 F. Supp. 380; 87 F. 2d 296.

ing up of a cable by means of a capstan operated by hand. The barge, which was documented as a vessel of the United States, never went to sea but was confined in its operation to waters within a radius of thirty miles of Philadelphia. Rusin was employed under a union contract with respondent which stated that all bargemen assigned to specific barges in active operation were to be paid a monthly salary of $80 and were to be provided with quarters. It also stated that that compensation was "for all work performed by Bargemen in the operation of his own vessel" and that the rates provided were "based upon all services and time required to safeguard and operate the barge fleet, including necessary pumping, watching, or other emergency duties on Sundays and holidays." Rusin was continuously aboard. He bought his own meals and lived, ate, and slept on the barge. When he worked on any other boat, he received wages at an hourly rate, in addition to the monthly salary. Rusin had little experience as a seaman except that which he obtained as a bargeman. His duties consisted of taking general care of the barge. They included taking care of the lines at docks, tightening or slackening them as necessary; repairing leaks; pumping out the barge; taking lines from tugs; responding to whistles from the tugs; putting out navigational lights and signals; taking orders from the tugboat when being towed; moving the barge at piers by the capstan. He could not set the course or control or change it at any time. He was subject to orders of respondent's marine superintendent except when in tow at which time he was subject to the control of the tugboat captain. But he had no duties in connection with the handling of cargo and no shore duties. At the time of the injury he was the sole person aboard or employed upon the barge.

Sec. 19(a) of the Act gives the Deputy Commissioner "full power and authority to hear and determine all questions in respect of" claims for compensation. And § 21(b) gives the federal district courts power to suspend or set aside, in whole or in part, compensation orders if "not in accordance with law". In considering those provisions of the Act in the *Bassett* case we held that the District Court was not warranted in setting aside such an order because the court would weigh or appraise the evidence differently. The duty of the District Court, we said, was to give the award effect, "if there was evidence to support it." 309 U. S. at 258. And we stated that the findings of the Deputy Commissioner were conclusive even though the evidence permitted

conflicting inferences. *Id.* p. 260. And see *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244, 246. This statement of the finality to be accorded findings of the Deputy Commissioner under the Act was not new. It had been stated in substantially similar terms in *Voehl* v. *Indemnity Insurance Co.*, 288 U. S. 162, 166, and in *Del Vecchio* v. *Bowers*, 296 U. S. 280, 287. The rule fashioned by these cases followed the design of the Act of encouraging prompt and expeditious adjudication of claims arising under it.[2] By giving a large degree of finality to administrative determinations contests and delays, which employees could ill afford and which might deprive the Act of much of its beneficent effect, were discouraged. Thus it is that the judicial review conferred by § 21(b) does not give authority to the courts to set aside awards because they are deemed to be against the weight of the evidence. More is required. The error must be one of law, such as the misconstruction of a term of the Act.

We think the award granted by the Deputy Commissioner had such an infirmity.[3]

If the award were to stand, there would be brought within the Act a group of workers whom we do not believe Congress intended

[2] Sec. 14(b) makes the first instalment of compensation due on the fourteenth day after the employer has knowledge of the injury or death. Sec. 14(f) provides that if compensation, payable under an award, is not paid within ten days after it is due, a penalty of twenty per cent is added. Sec. 18 provides for the issuance by the Deputy Commissioner of a supplementary order when an employer is in default of payment of compensation due under an award for a period of thirty days. On such an order judgment and execution may be obtained in the federal district courts, the supplementary order of the Deputy Commissioner being final. Any waiver of the right to compensation under the Act is made invalid by § 15(b). Agreements for compensation not made in accordance with the Act are outlawed. §§ 15(a), 16. Limitations on the granting of interlocutory injunctions staying payment of compensation while an award is being contested are contained in § 21(b). And the United States Attorney is directed to appear on behalf of the Deputy Commissioner and defend compensation orders. 45 Stat. 490, 33 U. S. C. § 921a.

[3] In Davis v. Department of Labor, 317 U. S. 249, we were dealing with the problem of determining whether a so-called harbor worker could be compensated under a state act or must come under the Longshoremen's and Harbor Workers' Act. That problem was embarrassed by the fact that the line between federal and state domain had been drawn with reference to the rule of the *Jensen* case. There are no such complications here. In this case the line is one which Congress has drawn between two mutually exclusive federal systems. The risk of employees choosing the wrong remedy has been anticipated by Congress and at least partially avoided. For § 13(d) provides that where recovery is denied to any person in a suit brought at law or in admiralty to recover damages on the ground that his remedy was under the Longshoremen's and Harbor Workers' Act the limitation of time for making application for an award begins to run "only from the date of termination of such suit".

to include. The Senate Report makes clear that "The purpose of this bill is to provide for compensation, in the stead of liability, for a class of employees commonly known as 'longshoremen'. These men are mainly employed in loading, unloading, refitting, and repairing ships." S. Rep. No. 973, 69th Cong., 1st Sess., p. 16. We reviewed the history of the Act in the *Bassett* case and in the *Parker* case, and more recently in *Davis* v. *Department of Labor*, 317 U. S. 249. As we noted in those cases, the Act was adopted to meet the difficulties engendered by the decision in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205. And see *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149; *State of Washington* v. *W. C. Dawson & Co.*, 264 U. S. 219. That line of cases carved out a domain in which, according to a majority of this Court, state law could not constitutionally afford compensation to maritime employees. It was to fill that gap in the system of workmen's compensation that the present Act was passed. S. Rep. No. 973, *supra*, p. 16. But as we pointed out in the *Bassett* case (309 U. S. pp. 256-257) the effort to bring a master and members of a crew of a vessel under the Act was successfully opposed by the representatives of maritime employees. See *Nogueira* v. *New York, N. H. & H. R. Co.*, 281 U. S. 128, 136; *Warner* v. *Goltra*, 293 U. S. 155, 159-160. And the maritime unions which appeared as *amicus curiae* in the present case emphasize the importance of that exception. The liability of an employer under the Act is exclusive. § 5. On the other hand, those who are not covered by it but who are protected by maritime law are entitled to maintenance and cure, a remedy not restricted to accidents. As we said in *Aguilar* v. *Standard Oil Co.*, 318 U. S. 724, 732, "In this respect it is a broader liability than that imposed by modern workmen's compensation statutes." Moreover, seamen may sue under the Jones Act (41 Stat. 988, 1007, 46 U. S. C. § 688) for injuries in the course of their employment. And in such actions assumption of risk is no defense. *Socony-Vacuum Oil Co.* v. *Smith*, 305 U. S. 424. Or suit may be brought in admiralty for injuries caused by unseaworthiness of the vessel or its appurtenant appliances and equipment. *Mahnich* v. *Southern Steamship Co.*, 321 U. S. — and cases cited. These are basic rights. The maritime unions appearing in the present case maintain that those remedies are indeed superior to the relief afforded by the Longshoremen's and Harbor Workers' Act. Whether they are more desirable than

a system of compensation is not for us to determine. But where Congress has provided that these basic rights shall not be withheld from a class or classes of maritime employees it is our duty on judicial review to respect the command and not permit the exemption to be narrowed whether by administrative construction or otherwise.

If a barge without motive power of its own can have a "crew" within the meaning of the Act and if a "crew" may consist of one man, we do not see why Rusin does not meet the requirements. A barge is a vessel within the meaning of the Act even when it has no motive power of its own, since it is a means of transportation on water.[4] See *The General Cass*, Fed. Cas. No. 5,307; *Seabrook* v. *Raft*, 40 Fed. 596; *In re Eastern Dredging Co.*, 138 Fed. 942; *Los Angeles* v. *United Dredging Co.*, 14 F. 2d 364; *The Robert W. Parsons*, 191 U. S. 17, 30; *Ellis* v. *United States*, 206 U. S. 246, 259. A crew is generally "equivalent to ship's company" as Mr. Justice Story said in *United States* v. *Winn*, Fed. Case No. 16,740, 28 Fed. Cas. 733, 737. But we pointed out in the *Bassett* case that the word does not have "an absolutely unvarying legal significance". 309 U. S. at p. 258. We know of no reason why a person in sole charge of a vessel on a voyage is not as much a "member of the crew" as he would be if there were two or more aboard. We said in the *Bassett* case that the term "crew" embraced those "who are naturally and primarily on board" the vessel "to aid in her navigation." *Id.*, p. 260. But navigation is not limited to "putting over the helm". It also embraces duties essential for other purposes of the vessel. Certainly members of the crew are not confined to those who can "hand, reef and steer". Judge Hough pointed out in *The Buena Ventura*, 243 Fed. 797, 799, that "every one is entitled to the privilege of a seaman who, like seamen, at all times contributes to the labors about the operation and welfare of the ship when she is upon a voyage." And see *The Minna*, 11 Fed. 759; *Disbrow* v. *Walsh Bros.*, 36 Fed. 607, 608 (bargeman). We think that "crew" must have at least as broad a meaning under the Act.[5] For it is plain from the amendment exempting a "master

[4] "Vessel" is defined in Rev. Stat. § 3, 1 U. S. C. § 3, to include "every description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

[5] "Seaman" as used in a particular context may of course have a broader meaning than "crew". International Stevedoring Co. v. Haverty, 272 U. S. 50. And see Carumbo v. Cape Code S.S. Co., 123 F. 2d 991.

or member of a crew" that ship's company was not brought under the Act. And we are told by the Senate Report, as already noted, that the purpose of the legislation was to provide compensation for those who "are mainly employed in loading, unloading, refitting, and repairing ships." S. Rep. No. 973, *supra.*

Rusin, unlike the employee in the *Bassett* case,[6] did no work of the latter variety. He performed on the barge functions of the same quality as those performed in the maintenance and operation of many vessels. His were indeed different from the functions of any other "crew" only as they were made so by the nature of the vessel and its navigational requirements. The contract under which he was employed stated that the compensation was "based upon all services and time required to safeguard and operate the barge fleet." The services rendered conformed to that standard and no other. Rusin moreover had that permanent attachment to the vessel which commonly characterizes a crew. See *A. L. Mechling Barge Line* v. *Bassett*, 119 F. 2d 995.

We conclude that only by a distorted definition of the word "crew" as used in the Act could Rusin be restricted to the remedy which it affords and excluded from recovery under the Jones Act or be denied relief in admiralty. See *Maryland Casualty Co.* v. *Lawson*, 94 F. 2d 190; *Loverich* v. *Warner Co.*, 118 F. 2d 690; *Cantey* v. *McLain Line, Inc.*, 32 F. Supp. 1023, 114 F. 2d 1017, which we reversed in 312 U. S. 667.

Affirmed.

Mr. Justice ROBERTS concurs in the result.

[6] And see Moore Dry Dock Co. v. Pillsbury, 100 F. 2d 245; Henderson v. Jones, 110 F. 2d 952.